

MINUTES

Regulation of Nursing and Assisted Living Beds Interim Committee

Representative Wayne Steinhauer, Chair
Senator Mike Vehle, Vice Chair



Third Meeting, 2016 Interim
Thursday, September 08, 2016

Room 413 – State Capitol
Pierre, SD

The third meeting of the Regulation of Nursing and Assisted Living Beds Interim Committee was called to order by **Representative Wayne Steinhauer** at 10:00 a.m. (CDT) in room 414 of the State Capitol.

A quorum was determined with the following members answering the roll call: Representative Wayne Steinhauer, Chair; Senator Mike Vehle, Vice Chair; Representatives Blaine Campbell, Roger Hunt, Karen Soli, Jim Stalzer, and Steve Westra (via telephone); Senators Jim Bradford, Jenna Haggar, William Shorma, and Alan Solano.

Staff members present included Ms. Amanda Jacobs, Research Analyst; Mr. Fred Baatz, Principal Research Analyst; Mr. Jason Simmons, Senior Fiscal Analyst; and Ms. Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Approval of Minutes

A MOTION WAS MADE BY REPRESENTATIVE HUNT, SECONDED BY SENATOR SOLANO, TO APPROVE THE MINUTES OF THE AUGUST 23, 2016, MEETING. The motion prevailed on a voice vote.

Scope of Study

The full title of this study as assigned by the Executive Board is, *"A study of the benefits, merits, and negative impacts of regulating the number of nursing and assisted living beds in South Dakota. Further, recommend action that may include elimination of or revisions to regulations for the betterment of the South Dakota populace."*

The scope of study includes: history of regulations in South Dakota; how have the issues surrounding this industry and its constituents changed in recent years; comparison to other states' regulations and their results; why continue to regulate the number of beds; what are the pro and con results from these regulations, who benefits, how are these results measured/quantified, what are the trends; how can more "free enterprise" be introduced into our management of care facilities; what are the forecasted changes for the industry in South Dakota and its constituents; how can the industry best respond to demographic and geographic changes in the state and what role should the state play in these changes for the benefit of all concerned.

Committee Discussion

Representative Wayne Steinhauer said today's meeting is intended to have the committee reach some type of direction which will give the LRC staff time to research and draft the suggested committee proposals.

Senator Mike Vehle said the testimony has shown that there are probably enough nursing home beds but that they may not be in the right places. Senator Vehle added there are currently 100 moratorium beds in the pool and those

can be reallocated through a Request for Proposal (RFP) from the Department of Health. Senator Vehle said once those beds are depleted, perhaps something will need to be done to put some beds back in the pool.

Senator Vehle said having different types of healthcare facilities on the same campus would be beneficial, as clients could move from one type of care to another without having to relocate.

Senator Alan Solano agreed that there should be a way to replenish the available moratorium beds when the 100 beds are in use. Senator Solano said there may be a way to incentivize nursing homes to turn in unused moratorium beds as a way to have beds available to meet the needs of geographic areas that find themselves lacking in nursing home beds.

Senator William Shorma added that a certain percentage of the available beds placed in the pool should be specified as Medicaid beds.

Representative Karen Soli said the Department of Social Services (DSS) had pointed out the need for nursing home beds seems to be decreasing as the use of in-home and assisted living care is increasing, so the need for additional beds may not be such a big issue in the future.

Representative Roger Hunt said the way to get the available beds in the right locations is to allow free enterprise to get involved in the process. Representative Hunt suggested drafting legislation that would allow selling or transferring unused beds, adding that if a nursing home is allowed to sell a few beds, the financial gain may be a boost for the facility.

Representative Steinhauer said North Dakota does allow for the sale of beds, and one issue with that process was the high price for which the beds were being sold. Representative Steinhauer said any such legislation should probably include a way to suppress the price so it cannot get too high. Representative Steinhauer also suggested that any such legislation should include a percentage rate for the number of Medicaid beds included in the sales, so the purchasers cannot just target private pay beds.

Mr. Tom Martinec, Deputy Secretary and Director of the Division of Health Systems Development and Regulation, SD Department of Health, answered questions from the committee. Mr. Martinec said the Department of Health (DOH) is not purposely sitting on the 100 beds that are available, but made the decision to wait for the findings of this committee before moving forward. Mr. Martinec explained the time from preparing the proposal to the actual availability of the beds can be two years. According to Mr. Martinec, that delay can give the false appearance that the reallocation is not working. The Department of Health is open to discussing another RFP for additional beds this year, if needed. Mr. Martinec also pointed out that any RFP regarding nursing home beds does include a required percentage of the beds to be Medicaid beds.

Mr. Martinec said the number of beds that were included in the last RFP were the total number of beds available at that time. The current hundred beds have become available since then due to the closing of facilities. The statutes require the DOH to review nursing home beds annually, and they look at many things when considering issuing an RFP to fairly determine the appropriate level of need.

Representative Steinhauer said the DOH does a good job with RFPs and does not need direction on how to continue with that process. Representative Steinhauer commented that the use of the free market regarding nursing home beds could help the facilities by giving them a needed infusion of money when selling unused beds.

Representative Soli said she would like to hear from the DOH regarding the selling of nursing home beds.

Ms. Kim Malsam-Rysdon, Secretary, SD Department of Health (DOH), said from a policy perspective the DOH does not support the selling of nursing home beds either back to the state or to other providers. The consequences of that type of program does not fit within the process the DOH uses today, and DOH believes the process of allocating unused beds at this time is a viable way of moving forward.

Representative Blaine Campbell asked for the DOH's thoughts on the state of Wyoming, which does not have a moratorium on nursing home beds. Mr. Martinec said although Wyoming does not have a moratorium, the state does have mechanisms in place restricting uncontrolled growth. Ms. Malsam-Rysdon said they will research Wyoming's policies further and get the information to the committee.

Senator Vehle asked Ms. Malsam-Rysdon for her thoughts as to what direction the committee should take in order to address the assigned scope of study. Ms. Malsam-Rysdon said DOH is always working with people to find the proper healthcare services. The 100 available nursing home beds in the pool does seem adequate and the providers have not voiced any concerns regarding that number. The economics of nursing home care is challenging, and DOH continues to search for ways to support the nursing homes to make sure they remain viable. Ms. Malsam-Rysdon said there are several areas of healthcare that continue to need attention and DOH will need legislative support as they address those issues.

Representative Jim Stalzer asked if it would be helpful to change the number of designated areas from eight areas to ten areas. Ms. Malsam-Rysdon said it may helpful to do some fine tuning to the process to help get ahead of the issues.

Representative Stalzer and Senator Solano agreed the current statutes regarding nursing home beds seem to be conflicting and those statutes need to be brought into agreement. Representative Steinhauer said that issue will be added to the list of action items.

Senator Shorma requested the need to look at a certain percentage of unlicensed moratorium beds being returned to the state pool and finding some incentive that would encourage the nursing homes to comply be added to the list of action items.

Representative Soli suggested creating a more robust RFP process. Senator Vehle said the need for specialized care should be determined and then facilities offering that type of care could be given priority when distributing the available beds.

Public Comment

Mr. Clint Graybill, Sanford Health, Sioux Falls, explained the importance of beds when determining the value of a nursing home facility, saying that the value is set at so many thousand dollars per bed. Mr. Graybill said he does like the idea of a facility being able to sell beds, so that facilities without the physical space could make the beds available to facilities that do have the space.

Senator Vehle asked about the nursing facilities' workforce needs. Mr. Graybill said the industry has been fighting the issue of not enough staff for quite some time, and the level of acuity has grown significantly in nursing home care putting even more demands on staff. Mr. Graybill explained that the state assisting with incentives for nursing home workers would differ from assisting other types of businesses need for staffing, in that other businesses can raise prices and make adjustments to be able to give their own incentives. Nursing home facilities are tied to the Medicaid rate which often does not cover the full cost of care, so would be difficult for the facilities to offer hiring incentives. Mr. Graybill said anything this committee is able to do to assist nursing home facilities in this area would be greatly appreciated.

Mr. Mark Deak, SD Health Care Association (SDHCA), Sioux Falls, distributed an informative handout ([Document #1](#)). Mr. Deak said the SDHCA supports the current RFP process for distribution of nursing home beds.

Senator Solano asked what would happen if the 100 available beds are used and there is no way to replenish the pool of beds, the RFP process would be done. Mr. Deak said there have been six closures in the state and there are some facilities teetering on the edge. The SDHCA does not want to see further closures, but if they happen then more beds will become available.

Senator Jim Bradford asked why Medicaid payments for nursing home beds in North Dakota are so much higher than in South Dakota. Mr. Deak said it would take a tremendous investment by the state to raise the Medicaid rate to North Dakota's rate. Senator Bradford said the facilities in his district are on the verge of bankruptcy and their biggest problem is money, not needing more beds, and the state needs to look at raising the Medicaid reimbursement rate for nursing home care.

Senator Vehle asked Mr. Deak for his thoughts on addressing the nursing home care workforce issue. Mr. Deak said other industries are in need of workforce, too, but the consequences in the healthcare industry are much bigger than in others. Mr. Deak suggested looking at ways to expand the rural recruitment and retention program, perhaps including CNAs in the recruited positions.

Committee Discussion and Action

The committee discussed various issues and recommendations and with committee input, Representative Steinhauer assigned action as follows: reviewing the existing statutes and proposing changes will be addressed by the LRC staff; Senators Shorma and Solano will work with LRC on creating incentives to bring more unlicensed beds into the pool; Representative Soli will work with LRC in researching ways to make a more robust RFP program and look at the continuum of care; Representatives Steinhauer and Hunt will work with LRC in drafting legislation based on the North Dakota system of using free enterprise for distribution of nursing home beds; and Representative Hunt will work with LRC staff to draft legislation creating a rural recruitment and retention program to assist nursing home facilities with staffing.

Adjourn

A MOTION WAS MADE BY SENATOR VEHLE, SECONDED BY SENATOR HAGGAR, TO ADJOURN. The motion prevailed on a voice vote. The Committee adjourned at 3:25 pm.